E-015/M-90-327 GRANTING REQUEST FOR COMPETITIVE RATE FOR BOISE CASCADE AND AMENDING ELECTRIC SERVICE AGREEMENT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Patrice Vick	Commissioner

In the Matter of the Petition of Minnesota Power for Approval of a Competitive Rate for, and Amendment to, the Electric Service Agreement of Boise Cascade Corporation

ISSUE DATE: July 30, 1990

DOCKET NO. E-015/M-90-327

ORDER GRANTING REQUEST FOR COMPETITIVE RATE FOR BOISE CASCADE AND AMENDING ELECTRIC SERVICE AGREEMENT

PROCEDURAL HISTORY

Minn. Stat. §216B.162 was signed into law in 1990. This statute provides a mechanism for electric utilities to adopt competitive rate schedules for certain customers or groups of customers who are subject to effective competition. The statute also allows an electric utility to submit competitive rates for specific customers subject to effective competition. The Commission must approve, modify, or reject proposed rate schedules or competitive rates within 90 days of the utility's filing.

On May 1, 1990, Minnesota Power (MP or the Company) filed a petition proposing a competitive rate for the Boise Cascade Corporation (Boise) paper mill expansion. Because this was the first petition filed under the new statute, the Commission gave notice of a comment period to interested parties.

On June 18, 1990, the Department of Public Service (the Department), the Residential Utilities Division of the Office of Attorney General (OAG), and Northern States Power Company (NSP) filed comments in support of the proposed competitive rate. Minnegasco filed comments in opposition to MP's proposed competitive rate.

On June 25, 1990, MP, the Department, the OAG, and NSP filed reply comments reiterating and expanding on their previously stated views.

On June 26, 1990, one day after the final day of the comment period, Minnegasco filed reply comments. On the same date Minnegasco filed a petition requesting the Commission to accept its late comments.

The matter came before the Commission on July 17, 1990.

FINDINGS AND CONCLUSIONS

Should Minnegasco's late filing be accepted by the Commission?

In a concurrent matter, Docket No. E-015/M-90-325, the Commission has stated that Minnegasco may submit comments and recommendations as a participant in that docket and in the present docket. Minnegasco's reply comments were received by the Commission early on the morning following the deadline for filed comments. The other parties received Minnegasco's filing on approximately the same day. No party objected to the Commission's accepting this tardy filing. Neither the Commission nor any party was prejudiced by the late filing. The Commission will accept Minnegasco's reply comments for consideration.

Should MP's request to establish a competitive rate for Boise Cascade and to amend the electric service agreement be approved?

Factual Background

Boise Cascade Corporation is in the process of expanding its paper mill operation in International Falls, Minnesota. The expansion will require significant steam and electrical energy, both of which will be provided through cogeneration.

Boise has contracted with Rainy River Energy Corporation (Rainy River), a non-regulated subsidiary of MP, for the cogeneration facility. Under the contract, Rainy River will construct and own the steam boilers and eventually the turbine-generator to be used for cogeneration. Boise expects the first cogeneration project boiler to be in service by December 1, 1990, and a second boiler to be on line by February 1, 1992.

Installation of the turbine-generator will allow Boise to produce its own energy for the paper mill expansion. MP is currently Boise's electric energy supplier. Under its contract with MP, Boise has agreed to defer installation of the turbine until December 1994, the end of the contract period. If, however, Boise's total energy costs at any time exceed the cost of energy through cogeneration, Boise would proceed with construction of the turbine. MP has based its proposed competitive rate upon this situation. MP asserts that Boise's potential cogeneration is the effective competition which justifies a competitive rate under Minn. Stat. §216B.162 (1990).

Effective competition

In order for a rate proposed under Minn. Stat. §216B.162 (1990) to be considered by the Commission, it must be offered to a customer or group of customers who are subject to effective competition. The statute defines effective competition as:

> ...a market situation in which an electric utility serves a customer that:
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> *****
>
> (2) has the ability to obtain its energy requirements from an energy suppler that is not regulated by the commission under section 216B.16.

In its filed comments, Minnegasco argued that the MP-Boise situation does not fit the definition of effective competition within the meaning of the statute. Minnegasco asserted that if MP were not granted a competitive rate for Boise, Boise would immediately construct a gas-fired cogeneration facility and purchase gas from a regulated gas utility. Minnegasco therefore reasoned that MP's competition for energy service to Boise is the local gas supplier, Northern Minnesota Utilities (NMU). Because NMU is a regulated utility, Minnegasco argued that the statutory definition of effective competition is not fulfilled.

The Commission agrees with the position taken by the Department and the OAG on this issue. The energy supplier in competition with MP is Rainy River Energy Corporation, not Northern Minnesota Utilities. Rainy River will eventually construct and operate the cogeneration facility which will allow Boise to produce its own energy supply for the paper mill expansion. This primary source of energy, not the gas which would fuel the turbine producing the energy, is MP's potential competition. The ultimate test is the question of what the customer actually needs. In this case, the customer, Boise, needs electricity to turn the motors in the paper mill. Gas does not constitute this energy source; it is simply the fuel source for the energy-producing facility. Because the company which owns the energy-producing facility, Rainy River, is an unregulated entity, it fulfills the statutory meaning of effective competition.

The Commission notes that in this particular case MP's effective competitor, upon which it depends for its competitive rate, is its wholly owned subsidiary. The Commission has looked closely at this fact situation and has determined that in this case the effective competition is legitimate and appropriate. Boise was intent on implementing cogeneration before Rainy River came into the picture. According to comments by Boise, if Rainy River had not won the contract for the construction and management of the facility, Boise would have turned to another third party or constructed the facility itself. In this particular case, the cogeneration facility, although owned by MP's subsidiary, presents genuine effective competition within the meaning of the statute. The Commission will continue to examine such situations closely in the future, however, and will decide each on a case-by-case basis.

Although the Commission has determined that Boise's cogeneration facility presents effective competition justifying a competitive rate, the Commission is not attempting to discourage cogeneration. The production of energy through cogeneration facilities is a useful conservation measure and should be encouraged. In this case, however, benefits to the ratepayers outweigh the desirability of cogeneration during the contractual period. By providing a competitive rate to Boise, MP will retain a valuable customer and defer the construction of an unnecessary generator. This will be accomplished at a time when MP's capacity is abundant. When the Boise-MP contract ends and Boise has brought its turbine-generator on-line, MP will be entering a period of lessened capacity. It will then be desirable to "lose" the Boise project as a customer. The overall picture for MP's ratepayers, therefore, is highly favorable. The Commission is basing its decision in this matter on the benefits to MP ratepayers, and not on any desire to discourage cogeneration. The same factors would be weighed any time an electric utility based a competitive rate on competition with a cogenerator.

Other statutory requirements for a competitive rate

1. That the customer can obtain its energy requirements from an energy supplier not rate-regulated by the commission under section 216B.16

Boise's alternative to MP as an energy supplier is the cogeneration facility to be owned and operated by Rainy River, an unregulated entity.

2. That the customer is not likely to take service from the electric utility seeking to offer the competitive rate if the customer was charged the electric utility's standard rate

In oral comments, Boise's representative stated that Boise would definitely proceed immediately towards cogeneration if MP were not allowed to offer a competitive rate.

3. That it is in the best interest of all other customers to offer the competitive rate to the customer subject to effective competition

For the reasons stated above, allowing MP to offer a competitive rate to Boise is in the best interest of MP ratepayers.

4. That the minimum rate for the schedule recover at least the incremental cost of providing the service, including the cost of additional capacity that is to be added while the rate is in effect and any applicable on-peak or off-peak differential

In its comments the Department has indicated that MP's charges to Boise should recover significantly more than MP's incremental cost of providing service.

5. That the maximum possible rate reduction under a competitive rate schedule does not exceed the difference between the electric utility's applicable standard tariff and the cost to the customer of the lowest cost competitive energy supply

Boise's only economic alternative to receiving service from MP is to install its own turbine-generator to meet its energy requirements for expansion. The Department has concluded that MP's proposed rate will not violate the statutory prohibition against a discount greater than necessary to compete with the customer's alternative supply.

6. Other terms and conditions of the statute

The parties did not dispute that the proposed competitive rate met the remaining conditions of Minn. Stat. §216B.162:

a. The term of the contract is between 1 and 5 years;

b. The electric utility can seek recovery of the difference between the standard tariff and the competitive rate in a general rate case;

c. The rate is not unreasonably preferential, prejudicial or discriminatory under Minn. Stat. §216B.03 with respect to other customers in the class;

d. The rate does not compete with district heating or cooling;

e. The utility does not have a financial interest greater than 50% in the customer.

Conclusion

MP's proposed competitive rate for Boise's paper mill expansion meets the statutory requirements of Minn. Stat. §216B.162 (1990) and will be approved by the Commission.

ORDER

1. Minnesota Power's request to establish a competitive rate for Boise Cascade's paper mill expansion and to amend the electric service agreement is hereby approved.

2. Within one year of the date of this Order, and on an annual basis thereafter, Minnesota Power shall file the information required in Minn. Stat. §216B.162 Subd. 4 (4). This information shall also be included in any rate proceeding filed by the Company.

3. Within 10 days of the date of this Order, Minnesota Power shall file a copy of the Boise contract amendment for inclusion in its tariff book.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)